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FACSIMILE TRANSMITTAL

Date: November 30, 2005

To: Examiner Sathyanaraya Pannala
GROUP ART UNIT: 2167

Organization: United States Patent and Trademark Office

Fax Number: (571) 273-8300

Phone Number: (571) 272-4115

From: Kelvin M. Vivian

Re: USSN 09/705,967
Our Ref.: 1715P

Enclosed for your review is the Substitute Appeal Brief for the above-referenced case. If you have any questions or need further information, please contact us.

This is page 1 of 15 page(s).

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TRANSMITTAL FORM

ATTORNEY DCKET NO.
STL000039US1/1715P

In re the application: Jeff W. JOSTEN et al.

Confirmation No: 5056

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Serial No: 09/705,967

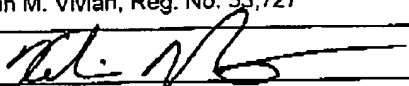

Group Art Unit: 2164

NOV 30 2005

Filed: November 3, 2000

Examiner: Pannala, Sathyanaraya R.

For: Method and System for Recovering Data In A Plurality of Systems

ENCLOSURES (check all that apply)					
<input type="checkbox"/>	Amendment/Reply	<input type="checkbox"/>	Assignment and Recordation Cover Sheet	<input type="checkbox"/>	After Allowance Communication to Group
<input type="checkbox"/>	After Final	<input type="checkbox"/>	Part B-Issue Fee Transmittal	<input type="checkbox"/>	Notice of Appeal
<input type="checkbox"/>	Information disclosure statement	<input type="checkbox"/>	Letter to Draftsman	<input checked="" type="checkbox"/>	Substitute Appeal Brief
<input type="checkbox"/>	Form 1449	<input type="checkbox"/>	Drawings	<input type="checkbox"/>	Status Letter
<input type="checkbox"/>	(X) Copies of References	<input type="checkbox"/>	Petition	<input type="checkbox"/>	Postcard
<input type="checkbox"/>	Extension of Time Request *	<input type="checkbox"/>	Fee Address Indication Form	<input type="checkbox"/>	Other Enclosure(s) (please identify below):
<input type="checkbox"/>	Express Abandonment	<input type="checkbox"/>	Terminal Disclaimer		
<input type="checkbox"/>	Certified Copy of Priority Doc	<input type="checkbox"/>	Power of Attorney and Revocation of Prior Powers		
<input checked="" type="checkbox"/>	Response to Communication regarding Substitute Brief	<input type="checkbox"/>	Change of Correspondence Address		
<input type="checkbox"/>	Response to Missing Parts	*Extension of Term: Pursuant to 37 CFR 1.136, Applicant petitions the Commissioner to extend the time for response for xxxxx month(s), from to .			
<input type="checkbox"/>	Executed Declaration by Inventor(s)				
CLAIMS					
FOR	Claims Remaining After Amendment	Highest # of Claims Previously Paid For	Extra Claims	RATE	FEE
Total Claims	18	22	0	\$ 50.00	\$ 0.00
Independent Claims	3	4	0	\$200.00	\$ 0.00
				Total Fees	\$ 0.00
METHOD OF PAYMENT					
<input type="checkbox"/>	Check no. _____ in the amount of \$ _____ is enclosed for payment of fees.				
<input type="checkbox"/>	Charge \$ to Deposit Account No. _____ for payment of fees.				
<input checked="" type="checkbox"/>	Charge any additional fees or credit any overpayment to Deposit Account No. 09-0460 (IBM Corporation).				
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT					
Attorney Name	Kelvin M. Vivian, Reg. No. 53,727				
Signature					
Date	November 30, 2005				
CERTIFICATE OF FACSIMILE					
I hereby certify that this correspondence is being faxed to Examiner Sathyanarayan Pannala at the Patent Central FAX number (571-273-8300) on November 30, 2005					
Type or printed name	Kym Moore				
Signature					

NOV 30 2005

Attorney Docket: STL000039US1/1715P

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being faxed to Examiner Sathyanarayan Pannala (571-273-8300) at the USPTO, on November 30, 2005.

Kym A. Moore

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:

Date: November 29, 2005

Jeff W. JOSTEN et al.

Confirmation No. 5056

Serial No.: 09/705,967

Group Art Unit: 2164

Filed: November 3, 2000

Examiner: Sathyanarayan Pannala

For: METHOD AND SYSTEM FOR RECOVERING DATA IN A
PLURALITY OF SYSTEMS

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

SUBSTITUTE BRIEF ON APPEAL

In response to the Office Communication mailed November 7, 2005, Appellant provides this Substitute Brief on Appeal including a "Summary of claimed subject matter," as set forth in 37 CFR 41.37 (c)(1)(v).

(1) Real Party in Interest

The real party in interest is International Business Machines Corporation by virtue of an assignment from the inventors recorded in the U.S. Patent Office on November 3, 2000, reel no. 011299, frame no. 0246.

(2) Related Appeals and Interferences

There are no related appeals or interferences known to the Appellant.

(3) Status of Claims

Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 and 23-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,185,699 to Haderle et al. ("Haderle") in view of U.S. Patent No. 6,275,832 to Watt et al. ("Watts").

Claims 26-28 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to set forth the subject matter which the applicants regard as their invention.

All of the foregoing claims are being appealed.

(4) Status of Amendments

There are no unentered amendments.

(5) Summary of Claimed Subject Matter

Independent claim 23 recites a method for recovering retained locks in a shared system environment having a plurality of computer systems sharing processor resources. The method includes determining that at least one computer system of the plurality of computer systems has failed. Specification, page 5, lines 6-8; FIG. 2. The method further includes retaining a plurality of locks held by the failed system in response to the failure. Specification, page 5, lines 8-9; FIG. 2. The method further includes performing a restart operation on the failed system to free the retained locks using only shared processor resources determined to be necessary for performing the restart operation. Specification, page 4, lines 8-17; FIG. 2.

Independent claim 24 recites a system for recovering retained locks in a shared system environment that, in essence, implements the method of claim 23.

Independent claim 25 recites a computer readable medium with program instructions for recovering retained locks in a shared system environment that, in essence, performs the method of claim 23.

Claim 26 depends from claim 23 and recites that the necessary shared processor resources do not include resources that enable the failed system to accept new work. Specification, page 4, lines 19-21.

Claim 27 depends from claim 24 and recites that the necessary shared processor resources do not include resources that enable the failed system to accept new work. Specification, page 4, lines 19-21.

Claim 28 depends from claim 25 and recites that the necessary shared processor resources do not include resources that enable the failed system to accept new work. Specification, page 4, lines 19-21.

(6) Grounds of Rejection to be Reviewed on Appeal

1. Appellant requests review as to claim 26-28 and their rejection under 35 U.S.C. § 112, second paragraph, as failing to set forth the subject matter which the applicants regard as their invention.

2. Appellant requests review as to claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 and 23-25 and their rejection under 35 U.S.C. § 103(a) as being unpatentable over Haderle in view of Watts.

(7) **Argument**

1. **Claims 26-28 are not properly rejected under 35 U.S.C. § 112, second paragraph, as failing to set forth the subject matter which the applicants regard as their invention.**

(A) **Claims 26-28**

In the Final Office Action, the Examiner rejected claims 26-28 under 35 U.S.C. § 112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention. Specifically, the Examiner states:

Evidence that claims 26-28 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the reply filed on 5/28/2003 [sic]. In that paper, applicant has stated as (New claims 26-28 and specification p. 4, lines 21 – p. 5, line 3), and this statement indicates that the invention is different from what is defined in the claim(s) because the specification do not support, rather it is adopted form [sic] the prior art.

Appellant respectfully submits that claims 26-28 are specifically supported at specification page 4, lines 21 through page 5, line 3. Claims 26, 27, and 28 depend upon independent claims 23, 24, and 25, respectively. Appellant submits that claims 26-28 are patentable when read in combination with their respective independent claims. In the reply filed on May 24, 2004, Appellant argues, “Resources that do not facilitate the recovery of the data are not used during the restart.” Applicant further sets forth an example of such resources in the statement – i.e., “Such resources include allowing the failed computer system to accept new work.” Immediately following, Appellant cites support for this example in the specification at page 4, lines 21 – page 5, line 3, and indicates that this example is claimed in the newly added claims 26-28. The manner in which the Examiner applies this support citation to Appellant’s arguments is erroneous and is contrary to its

plain meaning. Appellant therefore requests that the Examiner § 112 rejection of the claims be withdrawn.

2. **Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 and 23-25 are not properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Haderle in view of Watts.**

(B) Claims 2-3, 5-6, 8-9, 11-12, 14-15, 17-18 and 23-25

Claim 23 recites a method for recovering retained locks in a shared system environment having a plurality of computer systems sharing processor resources. The method includes determining that at least one computer system of the plurality of computer systems has failed, retaining a plurality of locks held by the failed system in response to the failure, and performing a restart operation on the failed system to free the retained locks using only shared processor resources determined to be necessary for performing the restart operation.

Haderle and Watts (either alone or in combination) fails to disclose the claimed subject matter.

Haderle discloses a method and apparatus to provide DBMS restart recovery that allows transactions to access data that does not have restart recovery work pending. In particular, Haderle states:

Regardless of the embodiment, the invention allows full recovery to be completed concurrent to the processing of new transactions requiring access to the database. An amount of restart recovery processing may be postponed until after the DBMS has begun accepting new work requests" (Abstract).

Watts discloses a technique for undoing a transaction that changes data in a database. The database contains at least one data unit, and the database is stored in a data storage device connected to a computer. A lock, transaction identifier, transaction

operation indicator, and data unit, are associated with the transaction. Watts undoes the transaction using the associated lock, transaction identifier, transaction operation indicator, and data unit (see Abstract).

(B)(i) Neither Haderle nor Watts Discloses Restarting A Computer System Using Only Shared Processor Resources Determined To Be Necessary For Performing A Restart Operation

Appellant respectfully submits that Haderle in view of Watts fails to teach or suggest each and every element of independent claims 23. Independent claim 23 requires that a restart operation on the failed system be performed to free the retained locks using *only* shared processor resources determined to be necessary for performing the restart operation. Thus, any processor resources not determined to be necessary for performing the restart operation is precluded from use. The fact that Haderle and Watts teaches that restart recovery processing is not always postponed, as acknowledged by the Examiner, means that new work requests can and are sometimes accepted. This is contrary to the ordinary and plain meaning of the limitation recited in claim 23 that only shared processor resources determined to be necessary for performing the restart operation is used. Thus, Appellant maintains that Haderle in view of Watts does not teach or suggest restarting the at least one computer system using only shared processor resources determined to be necessary for performing the restart operation, in combination with the other recited element in independent claim 23.

Accordingly, Appellant respectfully submits that claim 23 is, therefore, improperly rejected under 35 U.S.C. § 103(a) as being unpatentable over Haderle in view of Watts. Independent claims 24 and 25 incorporate the features of claim 23 and are, therefore, also improperly rejected for at least the same reasons. Claims 2-3, 5-6, 8-9,

11-12, 14-15, 17-18, and 26-28 respectively depend from claims 23, 24, and 25, and are also improperly rejected for at least the same reasons.

Please charge any fee that may be necessary for the continued pendency of this application to Deposit Account No. 09-0460 (IBM Corporation).

Respectfully submitted,

SAWYER LAW GROUP LLP



Kelvin M. Vivian
Attorney for Applicant
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November 30, 2005

Date

Appendix of Claims

1. (Canceled)
2. (Previously Presented) The method of claim 23 wherein step b) further comprises allowing another system of the plurality of systems to retain the plurality of locks of the at least one system.
3. (Previously Presented) The method of claim 23 wherein step c) further comprises:
 - c1) allowing another system of the plurality of systems to restart the at least one system;
 - c2) recovering data being protected by the retained locks of the at least one system utilizing only the shared processor resources of the another system determined to be necessary for performing the restart operation; and
 - c3) allowing the at least one system to terminate in a normal fashion.
4. (Canceled)
5. (Previously Presented) The method of claim 3 wherein step c1) further comprises:
 - cli) providing a request to restart the at least one system;

- c1ii) allowing the another system to detect the request; and
- c1iii) allowing the another system to restart the at least one system based on the request, utilizing only the shared processor resources determined to be necessary for performing the restart operation.

6. (Previously Presented) The method of claim 23 wherein the plurality of locks comprise a plurality of data locks.

7. (Canceled)

8. (Previously Presented) The system of claim 24 wherein the means for retaining the plurality of locks further comprises means for allowing another computer system to retain the plurality of locks held by the at least one computer system.

9. (Previously Presented) The system of claim 8 wherein the means for restarting the at least one computer system further comprises:

- means for allowing the another computer system to restart the at least one computer system;

- means for recovering the data being protected by the retained locks held by the at least one computer system using only the shared processor resources determined to be necessary for recovering the data; and

- means for allowing the at least one computer system to terminate in a normal fashion after recovering the data.

10. (Canceled)

11. (Previously Presented) The system of claim 9 wherein means for allowing the another computer system to restart the at least one computer system further comprises:

- means for providing a request to restart the at least one computer system;
- means for allowing the another computer system to detect the request; and
- means for allowing the another computer system to restart the at least one computer system based on the request using only the shared processor resources that are determined to be necessary for recovering the data.

12. (Previously Presented) The system of claim 24 wherein the plurality of locks comprise a plurality of data locks.

13. (Canceled)

14. (Previously Presented) The computer readable medium of claim 25 wherein instruction b) further comprises allowing another system of the plurality of systems to retain the plurality of locks held by the at least one system.

15. (Previously Presented) The computer readable medium of claim 25 wherein instruction c) further comprises:

c1) allowing the another system of the plurality of systems to restart the at least one system;

c2) recovering the data being protected by the retained locks held by the at least one system using only the shared processor resources that are determined to be necessary for recovering the data; and

c3) allowing the another system to terminate the at least one system in a normal fashion after recovering the data.

16. (Canceled)

17. (Previously Presented). The computer readable medium of claim 15 wherein instruction c1) further comprises:

cli) providing a request to restart the at least one system;

clii) allowing the another system to detect the request; and

cliii) allowing the another system to restart the at least one system based on the request using only the shared processor resources determined to be necessary for recovery the data.

18. (Previously Presented) The computer readable medium of claim 25 wherein the plurality of locks comprise a plurality of data locks.

19-22. (Canceled)

23. (Previously Presented) A method for recovering retained locks in a shared system environment having a plurality of computer systems sharing processor resources, comprising:

- (a) determining that at least one computer system of the plurality of computer systems has failed;
- (b) retaining a plurality of locks held by the failed system in response to the failure; and
- (c) performing a restart operation on the failed system to free the retained locks using only shared processor resources determined to be necessary for performing the restart operation.

24. (Previously Presented) A system for recovering retained locks in a shared system environment having a plurality of computer systems sharing processor resources, comprising:

- means for determining that at least one computer system of the plurality of computer systems has failed;
- means for retaining a plurality of locks held by the failed system in response to the failure; and
- means for performing a restart operation on the failed system to free the retained locks using only shared processor resources determined to be necessary for performing the restart operation.

25. (Previously Presented) A computer readable medium with program instructions for recovering retained locks in a shared system environment having a plurality of computer systems sharing processor resources, comprising instructions for:

- (a) determining that at least one computer system of the plurality of computer systems has failed;
- (b) retaining a plurality of locks held by the failed system in response to the failure; and
- (c) performing a restart operation on the failed system to free the retained locks using only shared processor resources determined to be necessary for performing the restart operation.

26. (Previously Presented) The method of claim 23, wherein the necessary shared processor resources does not include enabling the failed system to accept new work.

27. (Previously Presented) The system of claim 24, wherein the necessary shared processor resources does not include enabling the failed system to accept new work.

28. (Previously Presented) The medium of claim 25, wherein the necessary shared processor resources does not include enabling the failed system to accept new work.